IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

WP(C).No. 24260 of 2006(S)

OA.814/2004 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
.....

PETITIONERS:
----

1. **UNION OF INDIA, REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF RAILWAYS, RAIL BHAVAN, NEW DELHI.**

2. **THE CHIEF OPERATIONS MANAGER, SOUTHERN RAILWAY, HEADQUARTERS OFFICE, PARK TOWN P.O., CHENNAI-3.**

3. **THE ADDITIONAL DIVISIONAL RAILWAY MANAGER, SOUTHERN RAILWAY, PALAKKAD DIVISION, PALAKKAD.**

4. **THE SENIOR DIVISIONAL MECHANICAL ENGINEER, SOUTHERN RAILWAY, PALGHAT DIVISION, PALGHAT.**

5. **THE DIVISIONAL PERSONNEL OFFICER, SOUTHERN RAILWAY, PALAKKAD DIVISION, PALAKKAD.**

BY ADV. SMT.M.R.SREELETHA, SC, RAILWAYS

W.P.(C). NO.24260/2006:

RESPONDENT:

V.MOHAMMED, AGED 59 YEARS,
S/O. MOHAMMED, RETIRED PASSENGER DRIVER,
SOUTHERN RAILWAY, SHORANUR, RESIDING AT
VADAKKETHIL HOUSE, ALOOR, PATTITHARA POST,
PALGHAT DISTRICT.

BY ADV. SRI.T.C.GOVINDA SWAMY,
SMT.D.HEERA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.24260/2006:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER DTD. 28/10/2003 OF THE SOUTHERN RAILWAY.

EXT.P.2: COPY OF THE LETTER DTD. 18/02/2003 OF THE SOUTHERN RAILWAY.

EXT.P.3: COPY OF THE O.A. 814/2004 FILED BY THE RESPONDENT.

EXT.P.4: COPY OF THE ANNEXURE A-1 IN THE ABOVE O.A.

EXT.P.5: COPY OF THE ORDER DTD. 03/01/1996 OF THE SOUTHERN RAILWAY.

EXT.P.6: COPY OF THE LETTER DTD. 13/10/99 OF CHIEF PERSONNEL OFFICER, S.RLY.

EXT.P.7: COPY OF THE LETTER DTD. 16/04/2001 OF SR. DPO TO THE RESPONDENT.

EXT.P.8: COPY OF THE ACKNOWLEDGEMENT RECEIPT OF EXT.P.7 BY THE RESPONDENT.

EXT.P.9: COPY OF THE FORM NO. 12 SUBMITTED BY THE RESPONDENT.

EXT.P.10: COPY OF THE PENSION PAYMENT ORDER DTD. 29/09/2003.

EXT.P.11: COPY OF THE REPLY STATEMENT FILED BY THE PETITIONERS IN THE O.A. 814/2004.

EXT.P.12: COPY OF THE REJOINDER FILED BY THE RESPONDENT IN THE ABOVE O.A.

EXT.P.13: COPY OF THE ADDL. REPLY STATEMENT FILED BY THE PETITIONERS IN THE ABOVE O.A.

EXT.P.14: COPY OF THE RELEVANT PORTION OF RULE 64 OF RAILWAY SERVICES (PENSION) RULES 1993.

EXT.P.15: COPY OF THE JUDGMENT DTD. 06/07/2006 OF THE TRIBUNAL.

//TRUE COPY//

prv.

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C)No.24260 OF 2006

Dated 12th March, 2007

JUDGMENT

Koshy,J.

While working as Passenger Train Driver, the respondent was imposed with a penalty of removal from service for un-authorised absence. He filed an appeal. By Ext.P5, considering his family conditions and circumstances, the punishment of `removal of service' was reduced to `compulsory retirement'. In Ext.P5 it is stated as follows:

> "But the punishment imposed viz. `Removal of Service' can be reduced to `compulsory retirement' considering his family conditions and circumstances."

The above order was passed on 3.1.1996. After the appellate order, he filed various mercy petitions etc., but, that was in vain. He was not given pension and gratuity also. Even though compulsory retirement was ordered, no penalty was imposed on him reducing gratuity or pension. Rule 64 of the Railway Service (Pension) Rules, 1993 authorizes the competent officer to impose penalty payable from the pension or gratuity. The maximum penalty that can be imposed is also mentioned therein. But, the above Rule states that the above

penalty should be imposed on the date of compulsory retirement. That was not done. In the order of compulsory retirement, nothing was stated regarding the issuance of any penalty. The respondent lost his job prematurely due to compulsory retirement granted. In the absence of any order imposing penalty on that date, he is entitled to get pension and gratuity for the service he has actually rendered. Since the above amount was not paid, he approached the Central Administrative Tribunal and the Tribunal by Ext.P15 order directed the petitioners to pay the pension and gratuity legally due to the respondent with interest on gratuity. No grounds are made out for interference under Article 227 of the Constitution of India. We agree with the views of the Tribunal as there is no perverse finding or patent illegality.

The writ petition is dismissed with costs.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

tks